

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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JAN 28 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matters of)	
)	
Implementation of the Local)	CC Docket No. 96-98
Competition Provisions of the)	
Telecommunications Act of 1996)	
)	
Interconnection Between Local)	CC Docket No. 95-185
Exchange Carriers and Commercial)	
Mobile Radio Service Providers)	
)	
Area Code Relief Plan for Dallas)	NSD File No. 96-8
and Houston, Ordered by the Public)	
Utility Commission of Texas)	
)	
Administration of the North)	CC Docket No. 92-237
American Numbering Plan)	
)	
Proposed 708 Relief Plan and 630)	IAD File No. 94-102
Numbering Plan Area Code and)	
Ameritech-Illinois)	

**NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS
COMMENTS GENERALLY SUPPORTING THE RECONSIDERATION REQUEST OF
THE NEW YORK PUBLIC SERVICE COMMISSION**

Pursuant to the Federal Communications Commission's ("FCC" or "Commission") Rules of Practice and Procedure, the National Association of Regulatory Utility Commissioners ("NARUC") respectfully submits the following comments generally supporting the January 6, 1998 requests for further reconsideration/waiver filed by the New York Public Service Commission ("NYPSC") in the above-captioned proceeding. The NYPSC petition provides additional evidence and cites recent jurisprudence in support of its earlier October 7, 1996 request that the FCC vacate rules that impose 10-digit dialing for intrastate calls in areas served by area code overlays.

I. INTEREST OF NARUC

NARUC is a quasi-governmental nonprofit organization founded in 1889. Its members include the governmental bodies engaged in the regulation of carriers and utilities from all fifty States, the District of Columbia, Puerto Rico, and the Virgin Islands. NARUC's mission is to improve the quality and effectiveness of public utility regulation in America.

NARUC members include State and territorial officials charged with the duty of regulating the communications common carriers operating within their respective borders. These officials have the obligation to assure that communications

The NYPSC originally filed a Petition for Reconsideration on October 6, 1996. That Petition seeks reconsideration of the portion of the FCC's Local Competition Second Report and Order¹ that requires 10-digit dialing uniformly throughout the United States on intra-state calls when an area code overlay is instituted. Since that October 6th petition was filed, new information has become available and circumstances relevant to the FCC's deliberations have changed significantly. New information, available as a result of a NYPSC proceeding instituted to determine the best way to provide additional central office codes in New York City,² suggests

¹ Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Second Report and Order and Memorandum Opinion and Order, FCC 96-333, 61 Fed. Reg. 47284 (1996) (Local Competition Second Report and Order).

² NYPSC Case 96-C-1158 - Proceeding on Motion of the Commission to Investigate the Options for Making Additional Central Office Codes Available in the 212 and 917 Area Codes in New York City.

that an area code overlay can be structured with competitively neutral conditions. The overlay plan approved by the NYPSC appears to provide pro-competitive numbering relief consistent with the Communications Act of 1934, as amended by the Telecommunications Act of 1996. Because of the impending exhaustion of central office codes in New York City,³ and also as a direct result of the NYPSC's investigation and the Eighth Circuit decision,⁴ the NYPSC filed the January 6, 1998 Further Request for Reconsideration.

The NPPSC petitions directly raise issues of when and under what conditions State regulatory oversight of area code implementation can or should be preempted. Clearly, this proceeding raises issues of direct concern to NARUC's State commission membership. The FCC's ultimate determinations on these issues will provide the boundaries for the exercise of State regulatory oversight of NPA code depletion.

II. DISCUSSION

Because State NPA exhaust solutions are based upon extensive records, that include participation by the putative beneficiaries of the NPA relief plans - the business and residential end-users that ultimately bear both the direct and indirect costs of NPA changes - the FCC should defer to State decisions, like the proposed NYPSC plan, as long as they are not discriminatory or technically anti-competitive.

In its rules, the FCC wisely authorizes the States to continue the task of overseeing the introduction of new area codes ("Numbering Plan Area Codes or "NPA codes") subject to the Commission's numbering administration guidelines.

³ It is anticipated that New York Telephone Company ("New York Telephone") will exhaust all available central office codes in the 212 area code in June 1998, the 718 area code in early 1999, and the 917 area code in late 1999. Thus, number relief for the 212 area code must be provided by early 1998 and for the other area codes in New York City shortly thereafter.

⁴ The Eighth Circuit decided in California v. FCC, 1274 F.3d 934 (8th Cir. 1997), that the Commission lacks jurisdiction to promulgate dialing parity rules for intraLATA calls.

NPA exhaust proceedings are almost always controversial, hotly contested and a focal point of local business and residential user concern. For years, State Commissions have been addressing local NPA exhaust situations.

Over the last seven years the pace of NPA exhaust has accelerated. States have evolved different solutions to exhaust problems based upon extensive evidentiary records and significant input from the affected residential and business consumers. Current and proposed solutions have included NPA splits (single and multiple), NPA overlays, and transparent NPA overlays.

The efficient use of the numbering resources is very important to State commissions and the FCC in their roles of implementing effective competition and their duties under the 1996 Act, and number conservation measures are imperative to the future management of the numbering resources.

In response to the increased pace of exhaust and the new proposals emerging at the State and federal level to manage numbering resources more efficiently, NARUC, at its November 1997 Annual Convention passed a resolution that:

Encourages members of the NARUC Subcommittee on Communications to cooperate with both the FCC and other States' efforts in the establishment of conservation measures for telephone numbers;

Encourages States to perform sufficient conservation methods and otherwise investigate area code exhaust situations to ensure the necessity of a new NPA prior to expansion of an area code;

Suggests that deference to State decisions should be granted by the FCC as long as they are not discriminatory or technically noncompetitive; and finally

Urges the FCC and NARUC's State members to cooperate to produce a long-term plan for telephone numbering that will serve the telecommunications industry into the future without modification.

This resolution concurs in the FCC's insight. The FCC's August 1996 determination to leave States to address NPA exhaust proceedings recognizes the intensely local nature of the issues raised in these proceedings. The FCC's decision also recognizes that the State Commissions can only act based upon substantial evidence in the records compiled before them and that, as a result, State Court review of State decisions is almost always an adequate check for any alleged discriminatory conditions included in a particular State proposal.

Because the NYPSC only filed earlier this month mid-November, NARUC has not had an opportunity to pass a resolution specifically addressing this latest request. However, a review of the record presented, suggests that the New York commission has, based on the record before it, made a responsible effort to address the problems posed by NPA exhaust.

The NYPSC proceedings, based upon extensive public participation, concluded its proposed overlay relief plans will provide the longest possible period of area code relief while causing the least possible inconvenience to consumers.⁵ Indeed, according to the NYPSC's

⁵ The proposed Overlay plan is expected to provide 6.5 years of relief compared to about 5.0 years provided by the most efficient geographic split plan for Manhattan, and 13.0 years of relief for 718 versus 10.5 years under the most efficient geographic split. Overlay plans are less

causing the least possible inconvenience to consumers.⁵ Indeed, according to the NYPSC's pleadings " *The overwhelming majority of the consumers and community groups that either wrote or called the Department of Public Service concerning this issue favored the overlay relief plans. Similarly, almost all of the speakers that appeared at the seven public hearings held in all five Boroughs of New York City favored the overlay relief plans. Many expressed a strong desire to maintain their current area codes, telephone numbers, and dialing procedures.* "⁶

The NYPSC went on to impose a number of conditions to assure that the Overlays were implemented in a competitively equitable manner. For all the reasons the FCC originally chose to leave the States with the responsibility of addressing with NPA exhaust matters, NARUC respectfully suggests that the FCC should defer to the NYPSC's determinations and requests in this proceeding.

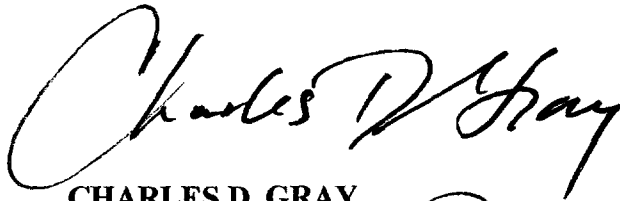
⁵ The proposed Overlay plan is expected to provide 6.5 years of relief compared to about 5.0 years provided by the most efficient geographic split plan for Manhattan, and 13.0 years of relief for 718 versus 10.5 years under the most efficient geographic split. Overlay plans are less inconvenient than geographic split plans because forced hone number or area code changes are not necessary. Avoiding such changes will save New York City businesses millions of dollars as they will not have to change advertising, stationery, and vehicle lettering. Residential customers will avoid the inconvenience of notifying friends and relatives of their new telephone numbers and/or area codes.

⁶ See, Affidavit In Support of the New York Department of Public Service Petition for Expedited Waiver of 47 C.F.R. 52.19(3)(C)(ii)" at 3.

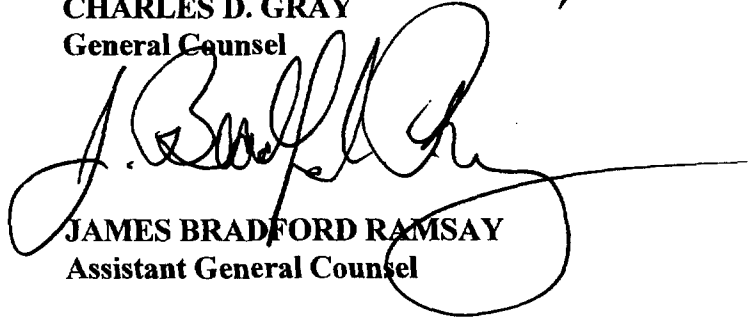
III. CONCLUSION

NARUC respectfully requests that the Commission carefully examine and give effect to these comments.

Respectfully submitted,



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January 28, 1998

**Resolution Regarding the Exhaustion of Telephone Area Codes and
Number Conservation Measures**

WHEREAS, The Telecommunications Act of 1996 ("1996 Act") granted the Federal Communications Commission (FCC) plenary jurisdiction over those portions of the North American Numbering Plan ("NANP") that pertain to the United States, including the designation of one or more impartial entities to administer telecommunications numbering, assignment of such numbers on an equitable basis, and the delegation of any or all of this jurisdiction to state commissions or other entities; and

WHEREAS, On July 13, 1995, in CC Docket No. 92-237, the FCC established the North American Numbering Council (NANC) for the purposes of advising the FCC on numbering issues, selecting and guiding a neutral NANP Administrator, applying FCC policy to resolve issues arising from the administration of the NANP, and resolving disputes on all issues; and

WHEREAS, On July 13, 1997, the FCC released an Order, FCC 85-283, in which it asks the NANC for recommendations on the following:

a selection as NANP Administrator that is an independent, non-government entity not closely associated with any particular industry segment;
a transition plan for transferring central office (CO) code administration responsibilities from LECs to the new NANP Administrator;
measures to conserve numbering resources;
what number resources not currently administered by the NANP Administrator could or should not be administered by them; and
whether the NANC, after two years, should continue as a Federal advisory committee; and

WHEREAS, The North American Numbering Plan Administrator (NANPA) subgroup was appointed by NANC to select the NANP administrator, and NANC has evaluated all of the proposals submitted to it, forwarding its recommendations to the FCC; and

WHEREAS, An accelerated exhaust of areas codes (Numbering Plan Areas or NPAs) has occurred in the United States, because of such factors as the basic growth of demand for telephone services requiring telephone number assignments, the introduction of local competition, and the increase in telephone number requirements necessary for growth in wireless telecommunications industry; and

WHEREAS, State Commissions have been addressing NPA exhaust situations in their States resulting in different solutions based upon the conditions and evidence gathered in that State. Current and/or proposed solutions have included NPA splits (single and multiple), NPA overlays, and transparent NPA overlays, and the FCC has subsequently reviewed some of these State decisions and other proposed solutions for non-discrimination and technical competitive neutrality, requiring the State to cancel or modify any implementation plans found to violate either condition; and

WHEREAS, In its rules, the FCC authorizes the States to continue the task of overseeing the introduction of new area codes subject to the Commission's numbering administration guidelines; and

WHEREAS, The efficient use of the numbering resources is very important to State commissions and the FCC in their roles of implementing effective competition and their duties under the 1996 Act, and number conservation measures are imperative to the future management of the numbering resources; and

WHEREAS, Many parties are currently working on solutions to the efficient management of telephone numbers at the Federal, State, and industry levels, and it is important for all parties to work in concert with each other in order to produce a coordinated national effort; now, therefore, be it

RESOLVED, That the National Association of Regulatory Utility Commission (NARUC), convened at its 109th Annual Convention in Boston, Massachusetts, encourages its members of the NARUC Subcommittee on Communications to endeavor to cooperate with both the FCC and other States' efforts in the establishment of conservation measures for telephone numbers; and be it further

RESOLVED, That States should endeavor to perform sufficient conservation methods and otherwise investigate area code exhaust situations to ensure the necessity of a new NPA prior to expansion of an area code and deference to State decisions should be granted by the FCC as long as they are not discriminatory or technically noncompetitive; and be it further

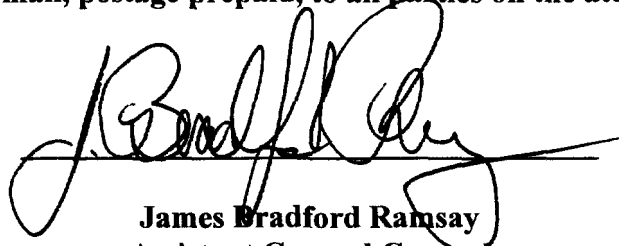
RESOLVED, That the FCC and the States should cooperate to produce a long-term plan for telephone numbering that will serve the telecommunications industry into the future without modification.

Sponsored by the Committee on Communications

Adopted by the Executive Committee on November 11, 1997

CERTIFICATE OF SERVICE

I, JAMES BRADFORD RAMSAY, certify that a copy of the foregoing was sent by first class United States mail, postage prepaid, to all parties on the attached Service List.

A handwritten signature in black ink, appearing to read 'J. Bradford Ramsay', is written over a horizontal line.

**James Bradford Ramsay
Assistant General Counsel**

**National Association of
Regulatory Utility Commissioners**

January 28, 1998